

Adversary Proceeding Cover Sheet		ADVERSARY PROCEEDING NUMBER (Court Use Only)	
PLAINTIFFS DALE PRESTON BENSON PATRICIA ANN BARTLEY BENSON		DEFENDANTS CITIFINANCIAL, INC.	
ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NO.) Roland S. Carlton, Jr., Esq. CARLTON LEGAL SERVICES, PLC 118 MacTanly Place Staunton, VA 24401 (540) 213-0547		ATTORNEYS (IF KNOWN)	
PARTY (Check one box only) <input type="checkbox"/> 1. U. S. PLAINTIFF <input type="checkbox"/> 2. U. S. DEFENDANT <input checked="" type="checkbox"/> 3. U. S. NOT A PARTY			
CAUSE OF ACTION (Write a brief statement of cause of action, including all U. S. Statutes involved) Motion to Determine Validity, Priority, or Extent of Lien on Real Estate, 11 U.S.C. 506, 11 U.S.C. 1322			
NATURE OF SUIT (Check the one most appropriate box only)			
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S. C. §727 </div> <div style="width: 33%;"> <input type="checkbox"/> 454 To Recover money or Property </div> <div style="width: 33%;"> <input type="checkbox"/> 458 To obtain approval for the sale both the interest of the estate and of a co-owner in property </div> <div style="width: 33%;"> <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. §523 </div> <div style="width: 33%;"> <input type="checkbox"/> 455 To Revoke an order of confirmation of a Chap. 11 or Chapt. 13 Plan </div> <div style="width: 33%;"> <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court </div> <div style="width: 33%;"> <input type="checkbox"/> 434 To obtain an injunction or other equitable relief </div> <div style="width: 33%;"> <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing cause of action </div> <div style="width: 33%;"> <input type="checkbox"/> 498 Other (specify) </div> <div style="width: 33%;"> <input checked="" type="checkbox"/> 435 To Determine Validity, Priority or Extent of a Lien or Other Interest in Property </div> <div style="width: 33%;"> <input type="checkbox"/> 457 To subordinate any allowed claim of interest except where such subordination is provided in a plan </div> </div>			
ORIGIN OF PROCEEDINGS (Check one box only) <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input checked="" type="checkbox"/> 1. Original Another Proceeding <input type="checkbox"/> 2. Removed Proceeding <input type="checkbox"/> 3. Reinstated or Reopened <input type="checkbox"/> 4 Transferred from Bankruptcy Court </div>			<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND N/A	NEAREST THOUSAND \$0.00	OTHER RELIEF SOUGHT: Declaration of unsecured debt; avoidance/release of Deed of Trust	<input type="checkbox"/> JURY DEMAND
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR DALE PRESTON BENSON PATRICIA ANN BARTLEY BENSON		BANKRUPTCY CASE NO. 10-51064	
DISTRICT IN WHICH CASE IS PENDING Western District of Virginia		NAME OF JUDGE Honorable Ross W. Krumm, Chief Judge	
DIVISIONAL OFFICE Harrisonburg, Virginia			
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT	DIVISIONAL OFFICE	NAME OF JUDGE	
FILING FEE (Check one box only) <input type="checkbox"/> Fee attached <input checked="" type="checkbox"/> Fee Not Required <input type="checkbox"/> Fee is Deferred			
Date 8/31/2010	Print Name Roland S. Carlton, Jr., Esq.	Signature of Attorney (Or Plaintiff) x/s/ <u>Roland S. Carlton, Jr.</u>	

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

IN RE: Dale Preston Benson
Patricia Ann Bartley Benson
Debtor(s)

**MOTION TO AVOID AND RELEASE
DEED OF TRUST**

DALE PRESTON BENSON
PATRICIA ANN BARTLEY BENSON
Plaintiff/Debtor(s)

Case number: 10-51064

Adversary No. _____

v.

CITIFINANCIAL, INC.

Serve: CT Corporation System, Registered Agent
4701 Cox Road, Suite 301
Glen Allen, VA 23060

Defendant(s)

COMES NOW the Plaintiff/Debtors, Dale Preston Benson and Patricia Ann Bartley Benson, by counsel, pursuant to 11 U.S.C. §506, 11 U.S.C. §1322, and Bankruptcy Rule 7001, and respectfully represents unto the Court as follows:

1. That this is a core proceeding and this Court has jurisdiction over this issue pursuant to 28 U.S.C. §157 and 11 U.S.C. §1334.
2. That your Plaintiff/Debtors Dale Preston Benson and Patricia Ann Bartley Benson have filed a petition for relief under Chapter 13 of Title 11 of the United States Code on 06/25/10.
3. The Debtors Dale Preston Benson and Patricia Ann Bartley Benson own real estate located at 3 Bartley Street, Staunton, Virginia. At the time of the bankruptcy petition filing, the recently appraised value of this real estate was Ninety Thousand Dollars (\$90,000.00). A copy of a recent real estate appraisal is attached as Exhibit A.
4. The Debt of approximately Fifteen Thousand Eight Hundred Fifty Seven and 78 /100 Dollars (\$15,857.78), based upon a pre petition monthly statement, owed to Defendant Citifinancial,

Inc. is secured by a Deed of Trust on the Debtor's real estate of record in the Circuit Court of Augusta County, Virginia, record no 060015546 and was recorded on November 29, 2006. A copy of the Defendant's Deed of Trust is attached as Exhibit B, and a copy of the recent monthly statement from defendant is attached as Exhibit C.

5. The aforesaid Deed of Trust was preceded by another Deed of Trust on the Debtor's real estate of record in the Clerk's Office of the Circuit Court of Augusta County, Virginia. The first Deed of Trust secures a debt owed to Beneficial Mortgage Co. of Virginia, record no. 060008547, and was recorded on June 29, 2006. Beneficial Mortgage Co. of Virginia is still the present noteholder secured by this Deed of Trust and the outstanding debt balance of the note is One Hundred Thirty One Thousand Eighty Seven and 81/100 Dollars (\$131,087.80). A copy of the first Deed of Trust is attached as Exhibit D, and a copy of the claim cover page filed in this case by Beneficial Mortgage Co. of Virginia is attached as Exhibit E.
6. Therefore, the debt owed to Defendant Citifinancial, Inc. is a wholly unsecured debt and the Deed of Trust of record in the Clerk's Office of the Circuit Court of Augusta County, Virginia, record no. 060015546 should be voided and released pursuant to 11 U.S.C. §506(d) and 11 U.S.C §1322.
7. In support of this motion, Debtor refers this Court to *In re Millard*, 414 B.R. 73 (D. Md. 2009); *Zimmer v. PSB Lending Corp.*, 313 F.3d 1220 (9th Cir. 2002); *Lane v. W. Interstate Bancorp*, 280 F.3d 663 (6th Cir. 2002); *Pond v. Farm Specialist Realty*, 252 F.3d 122 (2d Cir. 2001); *Tanner v. First-Plus Fin., Inc.*, 217 F.3d 1357 (11th Cir. 2000); *Bartee v. Tara Colony Homeowners Association*, 212 F.3d 277 (5th Cir 2000); *McDonald v. Master Fin., Inc.*, 205 F.3d 606 (3rd Cir. 2000); *Domestic Bank v. Mann*, 249 B.R. 831 (1st Cir. BAP 2000); *Wright*

v. Commercial Credit Corporation, 178 B.R. 703 (Bankr. E.D. Va 1995);*Elliott v. Citifinancial, Inc.*, Adversary Case 07-06064 (Judge Anderson, Western District of Va).

WHEREFORE, Debtor prays that this Court enter an Order, pursuant to 11 U.S.C. §506 and 11 U.S.C. §1322, which holds that the debt owed by plaintiff/debtors Dale Preston Benson and Patricia Ann Bartley Benson to defendant Citifinancial, Inc. is a wholly unsecured debt, which voids and releases the Deed of Trust of record in the clerk's office of the Circuit Court of Augusta County, Virginia, record no 060015546; and for such other and further relief as the Court, in equity, deems appropriate.

/s/ Roland S. Carlton, Jr.
Counsel

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